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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-197290 (RCP)

May 5, 1981

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The Honorable Peter W. Rodino, Jr.  
Chairman, Committee on the Judiciary  
House of Representatives

Dear Mr. Chairman:

This responds to your letter of February 13, 1981, in which you request our views on H.R. 1025, 97th Congress, 1st Session, [a bill to] provide for equitable waiver in the compromise and collection of Federal claims."

[The purpose of the Waiver Acts]-5 U.S.C. § 5584, 10 U.S.C. § 2774 and 32 U.S.C. § 716--is to allow the waiver, either in whole or in part, of a claim of the United States against an employee or former employee of a Federal agency or a member or former member of the military service or National Guard arising out of an erroneous payment of pay or allowances, the collection of which would be against equity and good conscience and not in the best interests of the United States.]

[The present bill] is similar to a bill, H.R. 13393, originally introduced in the 94th Congress, 2d Session, at the request of the General Accounting Office. The original bill sought to permit the ceiling on the amount of an overpayment which could be finally adjudicated at the agency level from \$500 to "\* \* \* not in excess of amounts to be prescribed by the Comptroller General from time to time."

[The present bill], H.R. 1025, specifically raises the ceiling on agency action from \$500 to \$5000. We believe that this proposed amendment would improve the overall economy and efficiency of waiver processing. It would result in no additional administrative

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not restricted

workload to the agencies because they must review waiver requests regardless of whether the cases are forwarded to GAO or settled at the administrative level. The overall procedures for handling waivers will not be significantly changed because waiver cases will continue to be handled in accordance with standards prescribed by the Comptroller General. Agency performance will continue to be evaluated by GAO during onsite reviews of agency operations and doubtful cases and appeals will continue to be submitted to the Comptroller General for review.)

Accordingly, (we strongly support the provisions of H.R. 1025.)

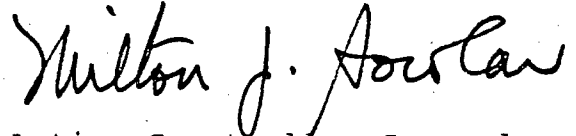
At the same time (we would like) to repeat a proposal we made to your committee last year in our comments on H.R. 224, 96th Congress, 1st Session, and (to reassert our continuing concern for the specific category of equitable claims which is precluded from consideration for waiver. The existing waiver statutes expressly do not apply to overpayments of travel and transportation allowances and expenses and relocation expenses.)

Our experience demonstrates that (serious hardship has been caused in many travel cases and that employees have been required to make substantial refunds to the Government as a result of circumstances which were not their fault.) More particularly, our experience shows that (many of these claims arise from erroneous agency authorizations which employees rely on in good faith to their detriment.) Indeed, (we have decided a number of individual claims where the increasing complexity of the laws relating to travel and transportation entitlements has outdistanced the agencies' ability to regulate these entitlements.) The examples presented in Appendix II are indicative of the broad range of travel and transportation expenses and relocation expenses claims for (which waiver consideration is precluded by the applicable statutes.) (No other administrative relief was possible in any of these cases, but in all of them, if waiver had been available it would have been considered and probably granted. At the present time, however, the only available remedy in such cases is the pursuit of a private relief bill through the Congress.)

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Accordingly, {we are offering} in Appendix I {a proposed amendment addressing our additional concern expressed here. Enactment of the legislation recommended in Appendix I {would provide a mechanism for relieving individuals who are overpaid travel and transportation expenses and allowances and relocation expenses} in circumstances such as described in Appendix II. p. 2

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General  
of the United States

Enclosures

## APPENDIX I

## A BILL

TO PROVIDE FOR EQUITABLE WAIVER  
IN THE COMPROMISE AND COLLECTION  
OF FEDERAL CLAIMS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,  
That (a) section 5584 of title 5, United States Code, is amended (1) by striking out of the catchline "other than" and inserting in lieu thereof "including"; (2) by striking out of subsection (a) "other than" and inserting in lieu thereof "including"; (3) by striking out of subsection (a)(2)(A) "\$500;" and inserting in lieu thereof "\$5,000;".

(b) Section 2774 of title 10, United States Code, is amended by (1) striking out of the catchline "other than" and inserting in lieu thereof "including"; (2) by striking out of subsection (a) "other than" and inserting in lieu thereof "including"; (3) by striking out of subsection (a)(2)(A) "\$500;" and inserting in lieu thereof "\$5,000;"; (4) by striking out of subsection (b)(2) "other than" and inserting in lieu thereof "including".

(c) Section 716 of title 32, United States Code, is amended (1) by striking out of the catchline "other than" and inserting in lieu thereof "including"; (2) by striking out of subsection (a) "other than" and inserting in lieu thereof "including"; (3) by striking out of subsection (a)(2)(A) "\$500;" and inserting in lieu thereof "\$5,000;"; (4) by striking out of subsection (b)(2) "other than" and inserting in lieu thereof "including".



## APPENDIX II

Consideration of equitable claims involving travel and transportation expenses and allowances and relocation expenses is specifically precluded by the applicable waiver statutes. The following examples are illustrative of the kinds of problems which this legislative recommendation is designed to resolve on a comprehensive and consistent basis.

1. The claim of a civilian employee of the Department of the Interior transferred from Phoenix, Arizona, to Fairbanks Alaska, for a per diem allowance in connection with expenses incurred while traveling and occupying temporary quarters at the previously applicable rate of \$40 was disallowed. The employee was only entitled to per diem at the \$20 rate which was prescribed by an instruction memorandum issued by the agency prior to incurrence of travel and temporary quarters expenses, notwithstanding the fact that the claimant was not advised by expert agency officials and had no independent knowledge or awareness of the reduced per diem rate for Fairbanks, Alaska. The erroneous travel expense payment in the amount of \$511.34 could not be waived in view of the exclusionary provisions of 5 U.S.C. § 5584. However, since the denial of reimbursement resulted from administrative failures in implementing the regulatory change in the rate of per diem; the rate reduction was so substantial; and the claimant had acted in good faith reliance on travel orders and representations of agency officials, this Office determined that the



equities warranted reporting the claim to Congress under the Meritorious Claims Act, 31 U.S.C. § 236, as the only relief available. This matter was the subject of Private Law 96-4, August 13, 1979 (Matter of James C. Wilkinson, B-189537, December 11, 1978).

2. Similarly, our decision in Matter of Long Beach Naval Shipyard, B-190014, August 30, 1978, also illustrates how employees may be overpaid without being aware of it. The overpayments of per diem allowances in that case range from \$101.41 to \$2,302.01. These overpayments arose because the employees, all on long-term temporary duty assignments for training, relied on the erroneous representations of agency officials. The only relief available here was to report the 17 individual cases to Congress as a meritorious claim. This matter was the subject of Private Law 96-17, October 23, 1979.
3. In 1974 two Federal Government employees were transferred to Bloomington, Indiana, primarily for the purpose of training. Although relocation allowances paid to employees transferred for training purposes were strictly limited by 5 U.S.C. § 4109, cognizant agency officials erroneously authorized and reimbursed the employees for travel and transportation expenses and relocation expenses to which they were not entitled under applicable laws and regulations. The claim against the two employees amounted to \$231.25 and \$1,143.37. Again, the overpayments arose because the unsuspecting employees detrimentally relied on authorized agency officials. But as we noted in our decision, although estoppel has been found in some cases where there is a contractual relationship between the Government and a citizen, the doctrine of equitable estoppel could not be applied where the relationship between the Government and its employees is appointive and not contractual. In the absence of applicable waiver authority, no other administrative relief was available in this case. As a result, this

matter was also submitted as a meritorious claim, and was enacted as Private Law 95-55, September 30, 1978, (Matter of William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85 (1976)).

4. An employee of the Postal Service was authorized full transfer of station benefits upon his transfer of employment to the Forest Service. Subsequent administrative review determined that the employee was not entitled to these expenses because the Postal Service is excluded from the definition of "executive agency" pursuant to 5 U.S.C. § 104, as amended. Therefore employees of the Postal Service who transfer to executive agencies are analogous to new employees and not entitled to the relocation expenses of transferred employees under 5 U.S.C. §§ 5724 and 5724a. As a result, the employee in question was erroneously overpaid relocation expenses in the amount of \$5,880.11. The Forest Service petitioned this Office for waiver of the erroneous overpayment pointing out in part that "none of the agencies concerned in this matter appear to have properly implemented the statute through adequate instructions or guidance." Unfortunately, in view of the exclusionary provisions of 5 U.S.C. § 5584, this Office had no authority to grant the requested waiver. However, in view of the attendant administrative failures, the serious economic hardship, and the employee's good faith detrimental reliance upon the equally good faith representations of the agency's experts, this case was submitted as a meritorious claim, and was enacted as Private Law 96-115, December 20, 1980. (Matter of James A. Schultz, 59 Comp. Gen. 28 (1979)).
5. An appointee to a manpower-shortage category position in the National Oceanic and Atmospheric Administration was erroneously authorized relocation allowances which may be properly authorized only for continuing employees involved in transfers from one duty station to another. The erroneous overpayment in the amount of \$2,244.65 was determined to be a

valid debt due to the account of the United States; and, like other cases in this area, the new appointee's good faith detrimental reliance upon the authorizations of agency experts was not a dispositive consideration because the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations. This is so even though the agent may have been unaware of the limitations on his authority. In the absence of waiver authority under 5 U.S.C. § 5584 this Office could provide no further administrative consideration. (Matter of Alfred E. Gent, B-197121, January 21, 1980.)

6. This same result was mandated where two new appointees were issued travel orders authorizing reimbursement for relocation expenses to their first duty station predicated on the agency's representation that they were "Manpower Shortage" appointees. Subsequent review determined that neither of the appointees was appointed to a "Manpower Shortage" position, and there was no authority for reimbursing them for the expenses of moving to their first duty station. Waiver of the erroneous overpayments was precluded by operation of 5 U.S.C. § 5584. (Matter of Stephen C. Ehrmann and Robert Fullilove, B-194032, June 19, 1979.)
7. Another area of our present concern was addressed in our letter report B-189711, January 27, 1978, to the Honorable John Sparkman, Chairman, Senate Committee on Foreign Relations. At the Chairman's request, we reviewed problems that have been encountered in the operation of section 5 of the International Air Transportation Fair Competitive Practices Act of 1975, Pub. L. No. 93-623, 88 Stat. 2104 (49 U.S.C. § 1517), as amended, commonly referred to as the Fly America Act. The report details many of the difficulties that have arisen during the implementation of this Act, but particularly pertinent to our discussion here is our finding contained in section IV "Penalties," that the ultimate responsibility for an improper use of an uncertificated carrier



will fall on the employee, no matter who was responsible. With the enactment of the Fly America Act, employees who travel outside the United States now must be familiar with all the statutes, regulations, decisions, and the Official Airline Guide. It may be that a frequent traveler can gain an understanding of most of these sources, but an infrequent traveler must rely upon travel clerks and other allegedly expert agency officials. As a result, since the requirement for the use of certified air carriers is imposed directly by statute and all persons are charged with knowledge of it, the traveler is personally liable for any costs incurred because of his failure to comply with this requirement and he or she cannot be relieved of this responsibility even though they relied upon the advice or assistance of others in arranging the travel. And notwithstanding the potential equities involved in a given case, no relief would be possible under the waiver statutes which preclude consideration of travel claims.